

OCT 12 2006

**EMPLOYER STATUS DETERMINATION**  
**Mohall Central Railroad, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Mohall Central Railroad, Inc. (MHC) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA). MHC has not heretofore been ruled to be an employer under the RRA and RUIA.

Mr. Byron D. Olsen, one of the owners of MHC, advised that MHC acquired 69.15 miles of track from BNSF Railway Co., an employer under the RRA and RUIA, which extends from Sarles, North Dakota near the Canadian border to a point approximately four miles from Lakota, North Dakota. The line interchanges with BNSF at Ardoch, North Dakota. MHC reportedly has no employees. MHC operations are carried out under a lease agreement with Northern Plains Railroad, Inc., an employer under the Acts. The traffic on MHC's line is strictly freight consisting primarily of agricultural commodities. Actual operations began following the Surface Transportation Board (STB) order authorizing same as of October 25, 2005. See STB Finance Docket No. 34759, decided October 17, 2005.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain a substantially similar definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

According to Mr. Olsen, the purpose of the MHC operation is to provide rail service for the shipment of agricultural commodities. There is no information that would indicate that MHC's intent in purchasing the line is primarily designed to preserve rail service rather than profit from railroad activities. Accordingly, the Board finds that MHC has as a primary business purpose to profit from railroad activities. The Board therefore finds that Mohall Central Railroad, Inc., became a rail carrier employer under section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding sections of the RUIA beginning October 25, 2005.

Original signed by:

Michael S. Schwartz

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